I stop taking my medication so that I can be protected from discrimination? That is not what Congress intended when it passed the ADA.

By passing the ADA Amendments Act, the Senate is undoing the damage caused by the Supreme Court and reaffirming the principle that America will not tolerate discrimination based on real or perceived disability, fears and stereotypes.

America has made real progress since President George H.W. Bush signed the ADA in 1990. Many of the physical changes the ADA has brought about—like curb cuts—benefit all Americans, not just those with disabilities. Because of the ADA and other disability rights laws millions of Americans with disabilities have gained access to public accommodations, quality educations, and equal housing opportunities.

But too many people remained locked out of the workplace. Employment rates for men and women with disabilities have actually declined steadily since the ADA became law. Today, more than 60 percent of working-age Americans with disabilities are unemployed, and Americans with disabilities who do work are almost three times more likely to live in poverty than workers without disabilities. That is wrong, and it must end.

The march of progress in America can be marked by the expansion of freedom. Slaves who were denied full citizenship under our Constitution were given their rights with amendments after our Civil War and civil rights legislation almost a century later. Women denied the right to vote in America for generations finally won that right a century ago.

It is time indeed, it is past time—to expand our concept of freedom and acknowledge the rights of another group of Americans who have suffered discrimination through history: people with disabilities. It is my hope and expectation that the House and Senate can work together to resolve minor differences between our two bills and send the President a bill that he can sign that will protect all Americans with disabilities.

Mr. DODD. Madam President, I rise to support wholeheartedly the ADA Amendments Act of 2008. Nearly 20 years ago Congress passed the groundbreaking Americans with Disabilities Act. Because of its enactment and implementation, our country has made progress in eliminating the historical stigma previously associated with disability and guaranteeing basic civil rights and liberties to people with disabilities. I was a proud supporter of the ADA then, and I am a strong supporter of the ADA Amendments Act of 2008 now. In the years since the ADA became law, the courts have inappropriately limited its scope, and many Americans with disabilities have been denied the rights the law was intended to give them. This legislation will serve to ensure that those rights are protected and that people with disabilities are fully protected. It is my hope that this legislation will also help America become more accepting of diversity.

I would like to take a moment to applaud Senator HARKIN for his leadership on the ADA. Without his leadership neither the ADA, nor this legislation, would have been possible. I also would like to praise my good friends Senator KENNEDY and Senator HATCH, whose commitment to the issue made the passage of this legislation possible.

For decades, we have fought for the civil rights of people with disabilities, combating the antiquated mindsets of segregation, discrimination, and ignorance. Our Nation has come from a time when the exclusion of people with disabilities was the norm. We have come from a time when doctors told parents that their children with disabilities were better left isolated in institutions. We have come from a time when individuals with disabilities were not considered contributing members of society. Those times have thankfully changed. The passage of the ADA in 1990 provided the first step toward that change our country so desperately needed.

Although we have come along way in the past 18 years, the Americans with Disabilities Act has not afforded the full protections that this antidiscrimination statute originally intended to provide. The law has been repeatedly misinterpreted by the courts that have used an extremely narrow definition of disability. This definition is so narrow that many defendants with clear disabilities cannot even get their case heard in a courtroom because they do not qualify as having a disability. People with disabilities excluded from protections under the ADA include those with amputations, muscular dystrophy, epilepsy, diabetes, multiple sclerosis, cancer, and intellectual disabilities.

Ultimately, a series of Supreme Court rulings established precedents that leave many of our fellow citizens with disabilities little or no protections under current law. These decisions created a platform for future courts to say that a person does not have a disability when they benefit from mitigating measures such as medications, therapies, or other corrective devices. Ironically, this means that people with disabilities who use measures such as assistive technology to help them lead more self-sufficient lives are ultimately not protected from discrimination related to their disability. The Supreme Court decisions further narrowed the definition of disability by imposing a strict and demanding standard to the definition of disability—barring Americans coping with intellectual disabilities from the law's protections.

Equal protection under the law in the United States of America is not a privilege, but rather, it is a fundamental right due every citizen of our Nation, regardless of race, gender, national origin, religion, sex, age, or disability. It is unacceptable to deny any individual his or her right to those protections because of a misconstrued definition of disability. Our country has an obligation to its citizens to ensure that their fundamental rights are protected, and, if those rights are violated, that the option of recourse is available.

This antidiscrimination legislation would move us forward as one Nation in the direction that was intended 18 years ago. If this bill is signed into law, it will provide much needed clarification on the definition of disability, covering those individuals that rightly need protections under this law. The bill rejects the findings of the Supreme Court cases and specifies that mitigating measures are not to be considered in disability determining and clarifies that the definition should be more broadly interpreted.

Fortunately, we are a changing society, and we have come a long way since those times of segregation and stigma. Recognizing that our society needs to take yet another step to improve the civil rights of our fellow citizens, I urge my colleagues to join with us and pass the ADA Amendments Act of 2008.

I sincerely hope my colleagues will join me in bettering our country by passing the ADA Amendments Act. As we are a just society, I will continue to fight for the rights of my fellow Americans with disabilities so that we all have an equal chance to achieve the American dream. I urge my fellow colleagues to support this essential piece of legislation on behalf of the American people.

Mr. HARKIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAX POLICY

Mr. GRASSLEY. Madam President, today I wish to continue my discussions about one of the big choices facing voters this fall. That choice is which of our colleagues, Senator MCCAIN or Senator OBAMA, should we follow in terms of future tax policy. I speak as ranking member and former chairman of the Committee on Finance that has jurisdiction over tax policy.

In recent weeks—when I say in recent weeks, I mean in July because we weren't in session in August—I have talked about the history of party control and the likelihood of broad-based tax increases. I will use the tax increase thermometer—and that thermometer is up here—to point out history. I have discussed the specific precedent of the 1992 campaign with its promise of middle-class tax cuts and the 1998 world record tax increase that hit taxpayers above $20,000. I have referred to a case of tax hike amnesia, and I put up my famous Rip Van Winkle chart. I have discussed the impact of the McCain and the Obama plans, and in July I also talked about how the McCain and Obama plans would affect seniors and middle-income families. Today, I wish to focus on small business and the effect on small business of the tax policies of the respective Presidential candidates.

There has been a lot of controversy over the years about the effect of marginal tax rate increases on small business. It first arose back in 1993. At that time, President Clinton and the congressional majority Democrats pushed through legislation that retroactively raised the top marginal income tax rates. The rate was 31 percent. Under the 1993 bill, two new higher rates went into effect: the 36-percent rate and the 39.6-percent rate, and that is where it was until the 2001 tax bill.

One of the criticisms of those higher marginal tax rates passed back in 1993 was that these rates would harm small business. Did they harm small business? Well, I am here to say they did, but I have to back up what I am saying.

In the year 2001, Chairman BAUCUS—now the Democratic chairman of the committee I used to chair—Chairman BAUCUS and I crafted a bipartisan package of marginal rate reductions. The first part of 2001, I was chairman of that committee, and Chairman BAUCUS was the ranking member. So in 2001, we had this bipartisan package of marginal tax rate reductions. Part of that package brought the top rate from that 39.6 setup in 1993 down to 35 where it is now.

Another part of the package lowered the 36-percent rate to 33 percent. Although the nonpartisan Joint Committee on Taxation, in its distribution analysis, concluded that the legislation improved the progressivity of the Tax Code, the top marginal rate reductions were controversial.

Many of the liberal Members of this body and in the punditry decried the marginal rate reductions as a tax cut for the wealthy. Many of the press echoed those criticisms. They focused on the top rate reductions and defined the bipartisan, broad-based tax relief as ''the Bush tax cuts for the rich.'' These critics and Members who shared their view failed to examine the data on the whole bill, and if they had, they would have come to a different conclusion.

The fact that the Democratic Presidential candidate this year is embracing most of the policy from the bipartisan deal should give these liberal critics some pause. Senator OBAMA's campaign tax plan confirms what I said many times over the last 7 years. It confirms that the bill Chairman BAUCUS and I crafted in 2001 was a bipartisan plan that would stand the test of time.

Since the top rates of 35 percent and 33 percent were the source of considerable opposition back then in 2001, there was a lot of debate about their merits. Aside from the general economic benefits of the increased incentives for work and investment, Chairman BAUCUS and I focused on the benefits to small business. On Monday, August 20, 2001, Chairman BAUCUS and I released a statement on the Treasury Department's analysis of that 2001 tax bill, and I will quote from part of that press release that Senator BAUCUS and I put out:

> Owners of sole proprietorships, partnerships, S corporations, and farms will receive 80 percent of the tax relief associated with reducing the top income tax rate of 36 percent to 33 percent and 39.6 percent down to 35 percent. Senators Baucus and Grassley said most of the job growth over the last decade has come from small business. Experts agree that lower taxes increase a business's cash flow which helps with liquidity constraints during an economic slowdown and could increase the demand for investment and labor.

That is the end of the quote of Senator BAUCUS's and my press release commentary on the 2001 tax bill impact on small business.

Madam President, I ask unanimous consent at this point to have printed in the RECORD a copy of that August 20, 2001, Baucus-Grassley press release.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC, Aug. 20, 2001.

BAUCUS, GRASSLEY, NEW ANALYSIS SHOWS TAX CUTS HELP SMALL BUSINESSES

WASHINGTON.—Sen. Max Baucus, chairman of the Senate Finance Committee, and Sen. Chuck Grassley, ranking member, today said a new U.S. Treasury Department analysis shows that farms, small businesses and entrepreneurs will receive most of the tax relief from cutting the top marginal tax rates.

''I'm pleased this analysis shows the tax cut we passed will provide relief for farmers and ranchers and our agriculture community, as well as small businesses and entrepreneurs throughout our country,'' Baucus said. ''My State is an agriculture and small business State, and it's heartening to know that this tax cut will put money back in the economy and help create more jobs.''

Grassley said, ''One of the goals of our bipartisan tax cut was reducing the tax burden for small businesses. ''That's important because small businesses create most of the jobs in this country. The new analysis shows that we succeeded in our desire to re-kindle the fire fueling the small business engine.''

At the Senators' request, the Treasury Department's Office of Tax Analysis calculated that when the new tax relief law is fully phased in, entrepreneurs and small businesses—owners of sole proprietorships, partnerships, S corporations, and farms—will receive 80 percent of the tax relief associated with reducing the top income tax rates of 36 percent to 33 percent and 39.6 percent to 35 percent. Such business owners make up 62 percent (about 500,000) of the 800,000 tax returns that will benefit from the new 33 percent and 35 percent rates, according to the analysis.

Baucus and Grassley said most of the job growth over the past decade has come from small businesses, noting that 80 percent of the 11.1 million new jobs created between 1994 and 1998 were from businesses with fewer than 20 employees, and 80 percent of American businesses have fewer than 20 employees. Experts agree that lower taxes increase a business' cash flow, which helps with liquidity constraints during an economic slowdown and could increase the demand for investment and labor, the senators said.

An October 2000 report by the National Bureau of Economic Research, a well-regarded non-partisan organization, entitled ''Personal Income Taxes and the Growth of Small Firms,'' says plainly that when a sole proprietor's marginal tax rate goes up, the rate of growth of his or her business enterprise goes down, the senators said.

The bipartisan tax cut bill responded to the fact that individual income tax collections were near an all-time high, even higher than some levels imposed during World War II. Baucus and Grassley said individual rate cuts are important relief for small businesses because most small business owners and farmers operate their businesses as sole proprietorships, partnerships, Limited Liability, Corporations or S corporations. The income of these types of entities is reported directly on the individual tax returns of the owners. A rate reduction for individuals reduces rates for farms and small businesses.

Baucus and Grassley were instrumental in passing the bipartisan tax cut legislation.

TABLE T08–0164.—DISTRIBUTION OF TAX UNITS WITH BUSINESS INCOME BY STATUTORY MARGINAL TAX RATE ASSUMING EXTENSION AND INDEXATION OF THE 2007 AMT PATCH, 2009[1]

Statutory marginal income tax rate	All tax units		Tax units with business income[2]			Percent of tax units with business income[3]			Business income as percent of AGI[3]
	Number (thousands)	Percent of total	Number (thousands)	Percent of total	Greater than 0	Greater than 10% of AGI	Greater than 25% of AGI	Greater than 50% of AGI	
Non-filers	20,758	13.8	999	2.9	4.8	3.7	3.3	3.0	7.5
0%	23,434	15.6	6,960	20.0	29.7	28.6	26.0	22.8	62.7
10%	22,375	14.9	4,740	13.6	21.2	16.2	12.6	8.9	12.1
15%	49,522	33.0	11,024	31.7	22.3	12.5	7.8	4.5	6.9
25%	25,506	17.0	6,662	19.2	26.1	12.0	7.1	4.2	6.7
26% (AMT)	2,434	1.6	1,160	3.3	47.6	21.0	12.9	7.8	11.4
28% (Regular)	3,137	2.1	1,175	3.4	37.4	20.6	15.4	10.4	13.0
28% (AMT)	2,164	1.4	1,353	3.9	62.5	38.2	29.6	20.5	21.5
33%	335	0.2	206	0.6	61.7	46.3	38.0	29.9	31.6
35%	577	0.4	457	1.3	79.2	57.6	50.3	40.7	38.8
All	150,241	100.0	34,736	100.0	23.1	15.2	11.4	8.4	14.7

Source: Urban-Brookings Tax Policy Center Microsimulation Model (version 0308–5).
[1] Calendar year. Assumes extension and indexation of the 2007 AMT patch. Tax units that are dependents of other tax units are excluded from the analysis.
[2] Includes all tax units reporting a gain or loss on one or more of Schedules C, E, or F.
[3] Business income is defined as the sum of the absolute values of the gains or losses reported on Schedules C, E, and F.

Mr. GRASSLEY. I wish also to thank my friend, Chairman BAUCUS, and those on the other side for sticking with me on these marginal rate reductions over the years. With a strong impulse to raise marginal rates in the Democratic caucus, I know these votes were not easy. I know that small business folks in the State of Montana and other Members who supported it are also very grateful because it has really helped small business, besides giving parity between proprietorships and corporations which have a 35-percent rate, and there is no reason to tax businesses that are sole proprietorships more than big fat corporations.

Today, now, 7 years later, we find ourselves in the same debate. The data and implication of it are still very important in debating the merits of the stated top rates of 35 percent and 33 percent. Senator MCCAIN's position is that we should not raise those rates, especially in a time of the economy slowing down. Senator OBAMA insists that we raise those top rates. This is a sharp tax policy difference between the two potential Presidents.

As ranking member on the tax-writing Finance Committee, it is my duty to clarify this important debate. Our constituents have a right to be informed in an intellectually honest manner on this very important question. So, Madam President, let's take a look at this small business issue.

The first question we need to consider is what is small business. The second question would be what role do these small businesses play in our overall national economy. After that, we need to get a handle on which small businesses are affected by the higher rates that Senator OBAMA has proposed. Finally, we need to get a sense of how the small businesses are affected on the short term and long term. I am going to deal with each one of these questions right now.

So the first question: What is a small business? It is not a precise answer. In one way, some on the other side have said small businesses that matter are only those with owners who earn less than $200,000 to $250,000. To those folks at the local hardware store, if one of the owners or the sole owner owns over $250,000, no matter how many folks it employs, it is the same as a Home Depot or a Lowe's. Those of us from the heartland know the definition of small business is not limited to those whose owners make $250,000 or under. For us, it depends on whether the business is locally based. It depends on whether the business finances its growth from its own earnings. Conversely, to folks from small towns such as myself, big business is generally the companies that finance themselves through the stock market.

The reason the distinction is important for public policy issues such as the level of taxation is that we value local or regionally based businesses. The folks who own those businesses are drawn from the community. They attend the local Rotary clubs. They support the local little leagues.

Small business, as I see it, is a stabilizing yet very dynamic social force and just not an economic being. So when we talk about small business, we should not use any artificially low levels of income. We should use a commonsense definition of small business. There is too much at stake to demagog the definition.

It seems a good place to go for a definition of small business would be the Small Business Administration, the SBA. For most Federal policies, as a rule of thumb, the SBA would tell you it would be a privately held business with 500 or fewer employees. When we are considering tax policy—specifically the tax rate applicable to business—we have two categories. The first one is regular corporations. Virtually all big businesses—that is, publicly traded companies—are taxed under the regular corporate rate schedule.

There are several Tax Code rules dealing with small business. In general, the Tax Code treats those businesses that go to the capital market differently from those businesses that are financed by their owners. There are special rules for depreciation and there are special pension rules. Most important, however, are the rules that allow small business to avoid the double taxation that applies to corporate earnings. Owners of certain kinds of small business corporations, known as S corporations, can elect to be taxed as proprietorships or partnerships. That is, these corporate shareholders include the business income on their personal income tax returns. In general, an S corporation can have no more than 100 shareholders. In the case of families or pension plan owners, the number of shareholders can, in fact, be larger.

So with respect to the first question, I think we are on pretty solid ground in identifying any small business as a privately held business with 500 or fewer employees and, of course, the vast majority of them probably only a handful of employees, and maybe all within the family. You won't find much controversy, I believe, over that definition because it is one that we use here a lot on a lot of tax policy when it comes to SBA-type legislation.

Let's go to the second question, which is what is the economic impact of small business. No one disputes the fact that small business creates most of the jobs in America. According to the Small Business Administration's Office of Advocacy, small businesses generated 60 to 80 percent of the net new jobs annually over the last decade. I think that is important to think of. Again, over the last decade, small business has generated 60 percent to 80 percent of the new jobs.

Where are tomorrow's jobs going to come from? The answer is the largest share of future jobs is going to come from small business employers. I recommend that my colleagues consult the Small Business Administration's Office of Advocacy's ''frequently asked questions,'' which is available on the Internet at www.sba.gov/advo.

We should not be surprised that small businesses create the lion's share of the new jobs. A lot of American economic might, a lot of know-how and dynamism, resides in small business. According to the latest Treasury data, flow-through small business accounts for 93 percent of all businesses, 36 percent of business receipts, 34 percent of the wages paid, and 50 percent of all business income. I have a chart here that shows the growth of these flow-through small businesses since the year 1980. You can see it. The solid line, the number of businesses—the large dashes are total receipts and the small dashes are net income less deficit.

While I have focused on the flow-through, keep in mind that many of the other small businesses would be affected by the top marginal rates. Let's focus on the small business data. We have another chart here. The non-flow-through small businesses are what we call C corporations. These entities are taxed like conventional corporations but are not big publicly traded businesses. So the owners are paid through salary and dividends. These small businesses account, as you can see, for about 10 percent of the total receipts.

In terms of business receipts, then, the combination of flow-through and regular corporations accounts for about 46 percent, or almost half, of the Nation's private sector income. These regular small business entities account for 13 percent of the wages paid, and when combined with flow-throughs, the small business sector accounts for 47 percent of wages paid. That is almost half of the wages paid in the private sector jobs. In terms of net income, these regular small business entities account for 2 percent of the net business income. But when combined with the flow-throughs, the small business sector accounts for 52 percent of net business income. So that is over half of the net business income in our Nation. In other words, small businesses are a very vital, important, and productive part of our economy.

We may use the adjective ''small'' to describe this part of the business sector of our Nation, but the economic impact of these businesses, then, as you follow this chart, is not small. Like the answer to the definition of small business, I don't think many on the other side would quarrel with the notion that small business is a key part of our economy.

We have answered the first two questions, the definition of small business and its economic impact. Now, we need to ask that very vital third question that is being dealt with or being affected in this campaign for the Presidency. How are small businesses taxed? How should they be taxed? And what is the impact of that tax?

First off, small business owners pay the tax. The individual tax rate, at the owner's level, is the rate paid by small business. These businesses are described as flow-throughs because the business income and the tax burden flows through to the business owner. I have a chart here that shows how the small business owner is taxed. It may look a little complicated, but it is not as complicated as it looks. It shows the business entity. It could be a partnership or an S corporation or a proprietorship. The business gets its cash from four sources. The first is sales. The second is debt. As a practical matter, a business may be able to access credit only if its owners are willing to guarantee the debt. The third source is the owner's investment. The fourth is retained aftertax profit. That aftertax profit is a very important part of the economic viability of small business. I emphasize ''aftertax.'' These are sources of cash for the business.

The business uses its cash to pay workers. It uses this cash to pay other expenses, such as utilities, rent, and supplies. A business either makes a profit or a business suffers a loss. If it makes a profit, the profit is taxed at the owner's level; it flows through to the owner. At that point, the Federal Government takes or gets its share. The aftertax profit then, of course, is available to the owners. That aftertax profit, I will say once again, is a very important factor. That is where tax policy in this Presidential debate is very important.

Currently, the top two Federal tax rates are, since 2001, 33 percent and 35 percent. Senator MCCAIN wants to keep the rates right there. Senator OBAMA wants to raise statutory rates to 36 percent and 39.6 percent, where they were set between 1993, under President Clinton, until 2001. In addition, Senator OBAMA also wants to restore kind of a hidden marginal rate increase; that was referred to until recently in part of the Tax Code, known as PEP and Pease. With these additional add-ons of a hidden marginal tax rate, their real marginal tax rates actually go up above 39.6, to 40 percent and 41 percent respectively.

Senator OBAMA has also proposed to raise the Social Security tax on the same group of small business owners by 2 percent to 4 percent. Recently, however, Senator OBAMA modified his tax plan to defer the Social Security tax increase. If we set aside this future Social Security tax increase, the taxes owed by small business owners would rise by as much as 21 percent and 17 percent respectively. I have a chart that shows the difference between the current top rates, which Senator MCCAIN would keep, and the increase in the rates proposed by Senator OBAMA. So the blue line is Senator OBAMA, and the red line is Senator MCCAIN.

For that same group of taxpayers, Senator OBAMA proposes, in addition, to tax dividend income at 20 percent instead of 15 percent. That is a 33-percent increase.

So for these regular non-flow-through small business owners, the amount of tax owed on their business income would rise at a range of somewhere between 17 percent to 33 percent.

As with the answers to the questions of definition and economic impact of small business, I don't think folks on the other side would dispute what I have said about how small businesses are taxed.

Now we come to the fourth question. That question is: What is the relationship between the top marginal tax rates and small business activity? Put another way, how much small business activity will be affected by the increased rates Senator OBAMA proposes? Unlike the first three questions, the answers to this question have been very controversial.

Over the years, folks who are hostile to marginal rate reduction have pointed to one statistic. They have referred to the percentage of small business tax filers who fall in the top two rates. For instance, they cite a statistic from the Tax Policy Center that concludes that only 1.9 percent of the filers with business income pay the top two marginal rates.

According to the Tax Policy Center analysis, that percentage is roughly three times the percentage of tax filers in the general population. They will state that the proportion of small business owners in the top two brackets is roughly similar to that of the general taxpaying population. The opponents of marginal rate relief will use this data to conclude the small business owners' tax profile is similar to the nonbusiness taxpayer profile. Since the tax profile is similar, the general redistribution argument applies. The bottom line is that opponents will argue that raising marginal tax rates on small business owners makes the tax system more progressive.

For the opponents of marginal rate relief, that is where the discussion ends. It comes down to the view of tax fairness from their perspective. Although the statistics show small business owners are three times more likely to be in the top two brackets, that matters not one whit to the opponents. The rates must go up and the revenue must be spent on expanding Government. For an example of this perspective, I recommend that my colleagues consult the article ''Big Misconceptions About Small Businesses and Taxes'' from the Center on Budget Policy and Priorities, dated August 29, 2008, available on the Internet at www.cbpp.org.

The political point of the opponents boils down pretty simply. This small group of filers is very well off. So other than them, who cares if the rates go up? That is good politics. When you are talking about 1 percent or 2 percent of the population versus the rest, your theory is redistribution. You are going to be making an easier political case. That is where they leave it.

There is a huge assumption that makes this argument so very dangerous and has economic impacts in the end. The assumption is that since the number of filers is limited to roughly 2 percent, the business activity is likewise limited.

The assumption is extremely dangerous economic policy. Why? I will give two reasons. One, the 2 percent understates the number of small businesses affected. Second, the assumption assumes any negative effect of removing resources from small business. You don't have a lot of room, as the chart shows, to play with small business. They don't go to Wall Street and sell their stuff. They have to accumulate their own capital.

Let's go to that first dangerous assumption that I just proposed of understating the number of small businesses affected by that 2-percent figure. Distribution tables are like any other estimate. Inside this beltway, distribution tables are a fetish. Many on the left side of the political spectrum worship at the altar of distribution statistics. They treat it as the only measure—the only measure—of whether a tax policy proposal is good tax policy or bad tax policy. Economic consequences, what do they matter? But distribution tables are an analytical tool meant to inform a tax policy debate. Distribution tables are a snapshot. Like any other snapshot, the analysis is limited.

Let's take a look at the oft-cited Tax Policy Center distribution tables. The table references a total of roughly 35 million business tax units. That is a proxy for tax returns and households. About 30 percent of that total, roughly 8 million tax units, represent folks who pay no income tax for that year. The footnote to the table states that all business income is defined as the sum of ''gains or losses reported on Schedules C, E, and F.'' Those are where the flow-through income is reported on the owner's tax return.

When you look at small business gains and losses, it is quite revealing. Small businesses are at the cutting edge of our capital system. With capitalism comes the viability of the business cycle. Small businesses are more susceptible to the good and bad years that come with business cycles. One year a small business may do very well; the next year might be a year of loss.

As evidence of this volatility, I would like to refer to the SBA data on small business survival rates. You will find this on the frequently asked questions document I referred to, and you have a citation. According to SBA, two-thirds of small businesses survive at least 2 years; 44 percent of small businesses survive at least 4 years. What this means is that over time many small businesses rise and some fall.

By the way, mobility within income tax brackets is something that occurs to a great degree in the United States because of the dynamics of our society and our economy. So think about it. How many people in their midtwenties stay in the same bracket all the way through retirement? The mobility of income of small business is a subset of the overall income mobility in the U.S. population.

Treasury data clarifies the TPC snapshot, the Tax Policy Center snapshot. I have another chart. This chart shows that when gain and loss is considered, the snapshot changes very dramatically. So pay attention to this chart as I go through it.

For all flow-through taxpayers, 8 percent fall in the top two brackets. For taxpayers with active, positive flow-through income, the percentage is roughly the same, about 7 percent. For taxpayers with flow-through income that is greater than half their wage income, the percentage is the highest, at 9 percent.

So keep in mind we are dealing with a moving target when we talk about the 2-percent figure. Some businesses will produce losses for their owners one year and income in another year. So the business owners caught in the snapshot may not be the same business owners in another snapshot.

The second assumption about the 2-percent filer argument is even more dangerous. That assumption is, since a small percentage of tax filers are affected, the impact on small business activity is somehow trivial.

How will the higher marginal rates remove resources from small business you might ask? It is a simple answer. Let's go back to the chart that shows how small business works. If the amount paid in taxes increases somewhere, as I have said, between 17 percent to 33 percent, the tax take of the business rises as well. It comes out here. Let's go through an example.

I am going to use another chart. This taxpayer filer jointly owns a small business and earns $500,000 of business income. For purposes of this example, we will assume all of that taxpayer's income comes from the small business. As an aside, this assumption favors the opponents of marginal rate relief. Why? Because most small business owners have income from other members of the household and income from other sources. In that more likely scenario, the marginal rate hikes would bite even harder because more business income is pushed into the higher brackets.

Under this example, the small business owner pays $146,700 under current law. Senator MCCAIN's plan leaves this level of taxation in effect. Under Senator OBAMA's proposal, the small business owner's taxes would go up by $20,000. That is a tax increase on this small business owner of roughly 13 percent.

The tax increase would present the small business owner with a $20,000 current problem. The small business owner's current problem is how does he or she alter his or her business to make up the $20,000 he or she has lost to Senator OBAMA's higher tax rates? Can he or she grow enough sales to pay the extra tax? Maybe, but maybe not. Can he or she replace a $20,000 machine? Maybe maybe not. Can he or she cut back on the payroll? Maybe but maybe not.

How about the future? Any good business person has to project how their business is working. Any investment's value is predicated on how much income the investment is likely to produce in the future. If income is projected to go down, then the value of the investment declines.

Higher taxes negatively affect the net income from an investment. Small business owners have choice about where to put their capital. If taxes press down on the projected net income, then the value of the small business investment declines. Everything else being equal, a small business owner is less likely to leave the after-tax profit in the business. Likewise, the small business owner is less likely to make future investment in the business.

My point is, the tax increase Senator OBAMA is proposing has a very real cost to small business owners. And my entire remarks have been directed toward the tax policies on small business because they are the engine of employment and economic growth.

What are the businesses Senator OBAMA is proposing to hit with this tax increase; that is, which businesses are owned by taxpayers making over $250,000? How many employees do they have?

I have another chart. It is based on data from the National Federation of Independent Businesses, and we refer to that as the NFIB. It is a national small business organization. The NFIB has 350,000 dues-paying members. They take surveys of their members and other small business folks. I have the latest survey that deals with the finance questions from the year 2007. This chart contains the results of question No. 12. The question identifies, as we can see from the chart, groups of small business owners by household income with the size of their firm by the number of employees. Household income includes income from other adult members of the household. If you take a look at the responses, you can compare firm size with income level of the owners.

Here we have $250,000 and above. Those are the folks who are targeted for the tax increase, and that would raise the amount owed to the Government between 17 percent under one scenario and 33 percent under another. The survey indicates that 6.4 percent of the business owners of firms with one to nine employees—so small business—one to nine employees would be hit by Senator OBAMA's tax increase.

Now move a step over and you are going to find that about 21 percent of the owners of firms with 10 to 19 employees would be hit by the tax increase. That is the 20.6-percent figure you see. Move one step to the right and we find 40 percent of the owners of firms with 20 to 249 employees would be hit by the tax increase; 20 to 249 employees, 40 percent hit. Forty percent of the owners of the small business firms then would have increases of 17 percent to 33 percent.

There seems to be armies of hard-working tax analysts in this town who work for think tanks of the liberal variety. If you look at the analyses of the tax data, the armies of the left clearly are far more numerous than the armies of the right and the middle. And I give them credit for their hard work and dedication. I am sure they are poring over all this data.

Since the redistribution dogma is what floats their boats, they will probably take a hostile attitude toward the data I have just cited. Anticipating the attacks of green-eye-shaded armies of the left, I think we can trust the survey statistics.

NFIB has been conducting these surveys for years. I cannot think of any reason why respondents to the NFIB survey would inflate or deflate their income statistics. So I think this 40-percent snapshot is a very solid figure.

The data above relates to taxpayers of $250,000 and above. Since Senator OBAMA's advisers have said his current proposal would raise taxes on single taxpayers above $200,000 on a rough basis, it is fair to look at those small business owners as well. If you do that calculation, then on a combined basis, Senator OBAMA's proposed tax increase would hit even more small business owners.

So let's go back to NFIB question No. 12. For small businesses that employ one to nine workers, 12 percent would be hit by Senator OBAMA's higher taxes. For small businesses with 10 to 19 workers about 27 percent would be hit by the higher taxes. For small business owners with 20 to 249 workers, 50 percent—half of the small businesses—would be hit by Senator OBAMA's tax plan.

I want to get to the scariest part. As the chart shows, the percentage of small business owners hit by Senator OBAMA's higher taxes goes up as the number of employees goes up. So it is fair to say these figures probably understate the impact of the higher marginal tax rates on the remaining small businesses, meaning those between 250 and 500 employees. Moreover, like the distribution tables, the survey obviously is a snapshot. With small businesses alternately running gains and losses over time, then the higher rates will hit a larger number of small business owners.

With the conservative nature of this data in mind, let's take another look at the economic profile of the small business owner Senator OBAMA has targeted for a tax increase. Every year, the SBA prepares a report to the President on small business economy.

The last report we have was submitted to President Bush in December of last year. It covers data for the previous year—2006. For 2006, the entire private sector workforce growth occurred in small businesses with 500 or fewer employees. For 2006, over half of America's private sector employees worked in these firms—over half. For 2006, these small businesses accounted for over half of the Nation's private sector gross domestic product.

Drill down deeper into the data, and you will be worried even more. Two-thirds of that small business payroll came from firms that employ between 20 and 500 workers. If we go back to the NFIB question, we will find that the owners of these small businesses are the ones most targeted by Senator OBAMA's tax increase proposal.

Finally, Mr. President, I don't want you to take my word for it. Listen to what small business folks have said about the importance of lower marginal tax rates. Take a look at the chart I am now putting up. The chart is a copy of a letter dated March 14, 2003, from three principal small business grassroots organizations: the National Federation of Independent Businesses, the Small Business Legislative Council, and the Small Business Survival Committee. I would like to read the second paragraph of that letter. It may be too small for you to see on the screen, but it sums up the reality of the effects of the marginal tax rates on small business.

> Approximately 85 percent of small businesses file their tax returns as individuals. An increase in tax refunds means small firms will have more resources and more capital to put back into growing their businesses. A series of studies by four top economists examined the effect of the tax rate cuts on sole proprietors. Their results indicate that a 5 percent point cut in rates would increase capital investment by 10 percent. And they found that dropping the top tax rate from 39.6 to 33.2 percent would increase hiring by 12.1 percent.

That kind of tells you what a business force small business can be and how tax increases are negative or tax decreases are positive for small businesses to hire and to grow. What these small business groups said was that their tax policy priorities included a reduction in top marginal rates. You see it there in the letter from small business advocates.

Now, let's think about this. As the small business folks say in their letter, there is a link between tax relief, economic growth, and jobs. We have seen the evidence of that linkage in the year past. Tax relief kicked in, the economy started growing, and jobs started coming back. Why would we want to go in reverse gear?

Senator MCCAIN and Senator OBAMA agree on the policy objectives of growing jobs. Why would you aim a 17-percent or 33-percent marginal tax rate increase at the businesses that grew all the jobs in the most recently studied year? Senator MCCAIN's plan recognizes this job-loss risk. Senator OBAMA's plan goes in the opposite direction.

Let me conclude with a challenge to the proponents of raising marginal rates on small business. When I say critics, I am referring to political leaders, pundits, and even some in the media. I think the data I presented speaks for itself. If you disagree with the analysis but hold the position that higher marginal tax rates won't affect small businesses, would you agree to exclude small businesses from the 17- to 33-percent marginal rate increases that are being offered? I await your answer.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. WHITEHOUSE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2009—Continued

Mr. LEVIN. Mr. President, I think Senator WARNER is just about to enter the Chamber. I would ask the indulgence of my friend from Vermont for one more moment.

Even though there is not too much evidence, the fact is, we have made some significant progress today in some significant areas on the Defense authorization bill. Now that Senator WARNER is here, I always welcome his good wisdom. This is where we are now, as I was saying. We made some significant progress on the bill, even though it has not been that obvious and apparent.

Today we have been able to make some important progress. We will be here tomorrow. Senator WARNER and I will be here tomorrow. We urge Senators to come over to see if we can debate their amendments, to discuss their amendments. We are going to work with them to get these amendments offered tomorrow so they would be in line when voting time comes.

We will be here, that is true, even though there are no votes tomorrow, we understand. We will be here tomorrow. The Senate is in session. Senator WARNER and I will be here. It is very important that Senators who have amendments they intend to offer come here, work with us to try to get them in line for a vote, to see if we can get them offered tomorrow. That will take unanimous consent, but we will make an effort.

But we need Senators to come Monday afternoon. We will be here Monday afternoon. We will be here Tuesday. There are no votes Monday, but we will be here for the purpose of debating and discussing amendments, trying to again have them offered.

So it is also, I am authorized to say, that there will be no further votes today. Cloture will be filed tomorrow. I thank Senators who are working with us. We have lots of amendments we can clear if we can get unanimous consent to clear a managers' package. The managers' package, we are ready to go with that at any time. We are going to continue to add amendments to that package. We will be working with Senators during these next few days so we can, hopefully, get this bill passed and voted on on Tuesday.

That is the situation we are currently in.

The PRESIDING OFFICER (Mr. NELSON of Florida). The Senator from Virginia.

Mr. WARNER. Mr. President, the chairman has quite accurately stated the work that has been done thus far, our willingness as the two managers to continue working with Senators. We will both be present tomorrow as well as Monday. It is hoped that other Senators can be in a position to come forward with their amendments.

I might inquire, can the Presiding Officer advise us on the number of amendments on file? An approximation is satisfactory.

The PRESIDING OFFICER. There are over 220 amendments.

Mr. WARNER. I thank the Presiding Officer.

That presents clear evidence to colleagues of the magnitude of the task before us. I guess we have said this many times, but this would be the 43rd consecutive authorization bill for the men and women of the Armed Forces passed by the Senate. It is my hope that we can add No. 43.

I commend the chairman for his efforts. I have worked with him through this day. I believe we have had some helpful discussions with staff and colleagues on the means by which to make progress. We are here. It is imperative that this bill pass.

I remind colleagues of the military construction section of our bill which is so vital for the current and future needs of the U.S. military. This bill is the sole bill that can carry that important piece of annual legislation through and get it into a conference.

Mr. DEMINT. Will the Senator yield?

Mr. WARNER. Of course.

Mr. DEMINT. I appreciate having the opportunity to discuss our amendments. I ask unanimous consent that the pending amendment be set aside and that I be permitted to call up amendment No. 5405.

Mr. LEVIN. Mr. President, I will object. We are more than willing to discuss this amendment tomorrow. We realize this is one of the amendments that will have to be addressed if we are going to get to this bill. So it is not as though we are expecting to complete action on this bill without addressing the amendment of the Senator. However, this is not something I can agree to at this time but would be happy to tomorrow or Monday.

Mr. WARNER. Will the chairman yield for a question?